



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10

1200 Sixth Avenue, Suite 900
Seattle, WA 98101-3140

OFFICE OF THE REGIONAL
ADMINISTRATOR

MAR 30 2016

The Honorable Anthony D. Johnson
Chairman, Nez Perce Tribe
Post Office Box 305
Lapwai, Idaho 83540

Dear Chairman Johnson:

I am writing to offer consultation and coordination with the Nez Perce Tribe on an upcoming U.S. Environmental Protection Agency Clean Water Act action on Idaho's new and revised human health water quality criteria. As you know, in August 2012, the State of Idaho initiated a negotiated rulemaking public process to revise its human health water quality criteria. The EPA is expecting the Idaho Department of Environmental Quality to submit the State's revised water quality standards to the EPA by July 2016. The EPA will review and act to approve or disapprove Idaho's submission under the Clean Water Act. The EPA's decision will apply to waters in the State of Idaho and will not apply to waters in Indian Country.

The EPA recognizes the important role and interest of the Nez Perce Tribe in water quality and human health protection within their reservation and in treaty-protected areas. Because of the potential effect of the EPA's upcoming decision on Tribal resources, we would like to ensure that we consider input from Tribal governments in our Clean Water Act decision. Therefore, we are offering you the opportunity to consult on a government-to-government basis with the EPA on Idaho's proposed rulemaking to ensure that we fully consider the Tribes' interests. This consultation and coordination process will be conducted in accordance with the EPA Policy on Consultation and Coordination with Indian Tribes www.epa.gov/tribal/consultation/consult-policy.htm.

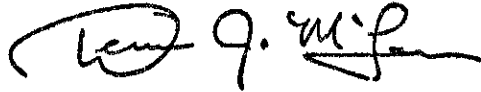
In order to meet our government-to-government responsibilities, the EPA will provide information to Tribal governments and appropriate Tribal staff in several forums which meet government-to-government consultation and coordination policies:

- I am committed to meet with Tribal government leaders affected by this upcoming EPA Idaho water quality standards action at a leadership meeting in Boise, Idaho, on Tuesday, May 3, 2016, from 1pm – 4pm Mountain Time, Banner Bank Building, 950 W. Bannock St, Boise, Idaho.
- Daniel D. Opalski, Director, EPA Region 10 Office of Water and Watersheds, will participate in government to government consultations with Tribal governments in Idaho. We will work with tribal governments to schedule these consultations in May, June, and July 2016.
- EPA is holding two technical conference calls with Tribal Staff; additional calls may be scheduled:
 - April 27 from 10:00 a.m. to 11:30 a.m. PST.
 - June 14 from 10:00 a.m. to 11:30 a.m. PST.

We request that you inform us as soon as possible but no later than April 22, 2016, if you would like to initiate consultation with us on this action. Please provide your response on the EPA's offer to initiate consultation and your availability to attend the May 3rd leadership meeting to Jim Woods at 206-553-2871 or woods.jim@epa.gov or to Mary Lou Soscia at (503) 326-5873 or soscia.marylou@epa.gov.

Please feel free to contact me at (206) 553-1234, or have your staff contact Jim Woods at 206-553-2871 or woods.jim@epa.gov or to Mary Lou Soscia at (503) 326-5873 or soscia.marylou@epa.gov. if you have any questions. I look forward to meeting with you to continue to work closely together and address Tribal government considerations on EPA actions to protect public health and the environment.

Sincerely,

A handwritten signature in black ink, appearing to read "Dennis McLerran", with a stylized flourish at the end.

Dennis McLerran
Regional Administrator

Enclosure: Background and Description of the EPA's Water Quality Standards Action

cc: Mr. Joe Oatman
Nez Perce Tribe

Ms. Julie Kane
Nez Perce Tribe

Mr. Paul Lumley
CRITFC

Background and Description of the EPA's Water Quality Standards Action

On July 7, 2006, the Idaho Department of Environmental Quality submitted revised human health criteria for EPA review and action. This submittal included 88 updated toxic human health criteria based on the EPA's default fish consumption rate of 17.5 grams per day. The EPA consulted with the Tribes during our review of the state's revised human health toxics criteria and after completing tribal consultation, the EPA disapproved Idaho's 2006 toxic human health criteria on May 10, 2012. On August 6, 2012, DEQ notified the EPA of their intention to begin a negotiated rulemaking process to address the EPA disapproval and to develop revised human health criteria. Information on DEQ's rulemaking can be found on the following website: <http://www.deq.idaho.gov/58-0102-1201>.

In April 2013, the Idaho Conservation League filed a notice of intent to sue because the EPA failed to promulgate new water quality criteria for Idaho following its May 2012 disapproval of Idaho's 2006 water quality standards submission. In December 2014, the EPA and ICL entered into a settlement agreement in which the EPA agreed and is obligated to take action on Idaho's submittal of revised human health criteria by either December 15, 2016, or six months after the date of DEQ's submission, if their submission is received between July 31, 2015, and December 15, 2016.

On a parallel track, in December 2012, the EPA began working with tribal governments in Idaho to develop a fish consumption study which reflects current quantitative fish consumption rates based on state of the art statistical methodologies. The EPA worked closely with the Shoshone-Bannock Tribes and the Nez Perce Tribe of Idaho to complete a 12 month fish consumption survey using the Food Frequency and National Cancer Institute methodologies to better understand tribal fish consumption. The draft report was submitted to DEQ in May 2015 and a peer reviewed report was submitted by the EPA to DEQ as part of the public comment process in early September. The EPA has also been working with the tribal governments in Idaho to better understand heritage fish consumption and that information has also be provided to DEQ. A final report is expected to be completed in April 2016.

Idaho DEQ a proposed rule that was adopted by the Idaho Board of Environmental Quality in December 2015. The rule proposed a cancer risk level of 10^{-5} and a FCR of 66.5 grams/day. This rule will be considered final and effective upon adjournment of 2016 legislative session if approved by the Idaho Legislature. The rule passed the Senate Resource & Environment Committee on January 18, 2016, and passed the House Environment, Energy & Technology Committee on February 2, 2016. Idaho DEQ is expected to provide this proposed rule to EPA by July 2016.

